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LAW DEPARTMENT

NOTIFICATION

24th October 2008

No. B/Estt.(H.C.)-06-03/2008/5253./J Whereas the draft of the following rules which the High Court of Patna proposed to make was published as required by sub-section (1) of Section 122 of the Code of Civil Procedure, 1908 (Act 5 of 1908) in Notification No. 4237 dated 05th September, 2008 in Bihar Gazette dated 05th September, 2008 inviting objections or suggestions from the persons likely to be affected thereby and notice was given that the said draft rules will be taken into consideration on or after fifteen days from the date of its publication in the Official Gazette.

AND WHEREAS, the said copy of the Gazette Notification was made available to the publication 05th September, 2008.

AND WHEREAS, no objections or suggestions have been received to the said draft rules by the High Court of Patna.

NOW, THEREFORE, in exercise of the powers conferred by Section 89 and Section 122 read with Section 126 and 127 of the Code of Civil Procedure, 1908 (Act 5 of 1908) the following rules made by the High Court, Patna and approved by the State Government is hereby published namely:-

Bihar (Case Flow Management in High Court) Rules, 2008.

By order of the Governor of Bihar,
RAJENDRA KUMAR MISHRA,
Sec-cum-legal Remembrancer.

BIHAR (CASE FLOW MANAGEMENT IN HIGH COURT) RULES, 2008

1. *Title, application and commencement.*—(i) These rules may be called Bihar (Cases Flow Management in High Court) Rules, 2008.

(ii) These rules shall apply to all writs application, LPA, appeals and all other Civil, Criminal and other proceedings before the High Courts.

(iii) These rules shall come into force from the date of their publication in the Official Gazette.

PART- I

1. Division of Cases into different Tracks

1. Writ Petitions : The High Court shall, at the stage of admission or issuing notice before admission categorize the Writ Petitions other than Writ of Habeas Corpus, into three categories:

Fast Track - The petitions in the Fast Track shall invariably be disposed of within a period not exceeding six months.

Normal Track - Petitions in this category of cases shall be disposed of within a period of one year.

Slow Track - Petitions in this category, subject to pendency of other cases in the Court, shall ordinarily be disposed of within a period of two years.

Notes:- Where an interim order of stay or injunction is granted in respect of liability to tax or demolition or eviction from public premises etc., and Similarly, all matters involving tenders would also be put on the Fast Track.

2. Every month Registrar, List & Computer shall, monitor the stage of each case likely to come up for hearing before each Bench (Division Bench or Single Judge) during that month which have been allocated to the different Tracks. The details shall be placed before the Chief Justice or Committee nominated for that purpose as well as the concerned Judge dealing with cases.

3. The Judge or Judges referred to in Clause (2) above may shift the case from one Track to another, depending upon the complexity (urgency) and other circumstances of the case.

4. When Computerization is available, data will be fed into the computer in such a manner that the Court of Judge or Judges, referred to in clause (2) above will be able to ascertain the position and stage of every case in every track from the computer screen.

5. Whenever the roster changes, the judge concerned who is dealing with final matters shall keep himself informed about the stage of the cases in various tracks listed before him during every week, with a view to see that the cases are taken up early.

6. Other matter : The High Court shall also divide Civil Appeals and other matter into different tracks on the lines indicated in sub-clause (2) to (5) above and the said clauses shall apply, mutatis mutandis, to the Civil Appeals filed in the Court. The High Court shall make a subject-wise division of the appeals/revision application for allocation in different tracks.

PART- II

Writ of Habeas Corpus

- (i) Notices in respect of writ of Habeas Corpus where the person is in custody under orders of the State Government or Central Government shall invariably be issued by the Court at the first listing and shall be made returnable within 48 hours.
- (ii) The State Government or Central Government may file a brief return enclosing the relevant documents to justify the detention.
- (iii) The matters shall be listed after notice on the 4th working day after issuance of notice, and the Court shall consider whether a more

detailed return to the Writ is necessary, and, if so required, shall give further time of a week and three days' time for filing a rejoinder.

- (iv) A Writ of Habeas Corpus shall invariably be disposed of within a period of fifteen days. It shall have preference over and above fast track cases

PART- III

Mode of Advance Service:-Mode of service of notice on the standing counsel for Respondents wherever available, against whom, interim orders are sought as per Patna High Court Rules. Such advance service shall generally relate to Governments or public sector undertakings who have Standing Counsel.

PART- IV

FIRST APPEALS TO HIGH COURT

1. Service of Notice of Appeal: (a) Irrespective of amendment in CPC, which provide filing a copy of appeal in Trial Court, a party can file appeal in Appellate Court (High Court) immediately for obtaining interim orders.

(b) In addition to the process for normal service as per the Code or civil Procedure, advance notice should simultaneously be given by the counsel for the party who is proposing to file the appeal, to the counsel for the opposite party in the Trial Court itself so as to enable them to inform the parties to appear if they so choose even at the first hearing stage.

2. Filing of Documents:-The Appellant shall, on the appeal being admitted, file all the essential papers within such period as may be fixed by the High Court for the purpose the High Court understanding the scope of the dispute and for the purpose of passing interlocutory orders.

3. Printing or typing of Paper Book:-Printing and preparation of paper-books by the High Court should be done away with. After service of notice is effected, counsel for both sides should agree on the list of documents and evidence to be printed or typed and the same shall be made ready by the parties within the time to be fixed by the Court. Thereafter the paper book shall be got ready. It must be assured that the paper books are ready at least six months in advance before the appeal is taken up for arguments. (Cause lists must specify if paper books have been filed or not).

4. Filing of Written Submissions and time for oral arguments:

- (a) Both the appellants and the respondents shall be required to submit their written submissions with all the relevant pages as per the Court paper book marked therein within a month of preparation of such paper-books, referred to in Rule 3 above.
- (b) Cause list may indicate if written submissions have been filed. If not, the Court must direct that they be filed immediately.
- (c) After the written submissions are filed, (with due service of copy to the other side) the matter should be listed before the Registrar to indicate the time that will be taken for arguments in the appeal. Alternatively, such matters may be listed before a Judge in Chambers for deciding the time duration and thereafter to fix a date of hearing on a clear date when the requisite extent of time will be available.
- (d) In the event that the matter is likely to take a day or more, the High Court may consider having a Caution List/Alternative List to meet eventualities where a case gets adjourned due to unavoidable reasons or does not go on before a Court, and those cases may be listed before a Court where, for one reason or another, the scheduled cases are not taken up for hearing.

5. Court may explore possibility of settlement:

- (a) At the first hearing of a First Appeal when both parties appear, the Court shall find out if there is a possibility of a settlement. If the parties are

agreeable even at the stage for mediation or conciliation, the High Court could make a reference to mediation or conciliation for the said purpose.

- (b) If necessary, the process contemplated by Section 89 of CPC may be resorted to by the Appellate Court so, however, that the hearing of the appeal is not unnecessarily delayed. Whichever is the ADR process adopted the court should fix a date for a report on the ADR two months from the date of reference.

PART-V

Appeals to Division Bench from Judgment of Single Judge of High Court [Letter Patent Appeals (LPA) or similar appeals under High Courts Rules]:-

An appeal to a Division Bench from judgment of a Single Judge generally lie in the following cases:

- (i) Appeals from interlocutory orders of the Single Judge in original jurisdiction matter including writs;
- (ii) Appeals from final judgments of a Single Judge in original jurisdiction;
- (iii) Other appeals permitted by any law to a Division Bench.

1. Appeals against interlocutory orders falling under category

- (i) Above should be invariably filed after advance notice to the opposite counsel (who has appeared before the Single Judge) so that both the sides will be represented at the very first hearing of the appeals. If both parties appear at the first hearing, there is no need to serve the opposite side by normal process and at least in some cases, the appeals against interlocutory order can be disposed of even at the first hearing. If, for any reason, this is not practicable, such appeals against interim orders should be disposed of within a period of a month.

2. In cases referred to above, necessary documents should be kept ready by the counsel to enable the Court to dispose of the appeal against interlocutory matter at the first hearing itself.

3. In all Appeals against interim orders in the High Court, in writ and civil matters, the Court should endeavour to set down and observe a strict time limit in regard to oral arguments. In case of Original Side appeals/LPAs arising out of final orders in a Writ Petition or arising out of civil suits filed in the High Court, a flexible time schedule may be followed.

4. The practice direction in regard to First Appeal should mutatis mutandis apply in respect of LPAs/Original side appeals against final judgments of the Single Judge.

5. Letters Patent Appeals arising from orders of the Single Judge in a writ Petition should be filed with simultaneous service on the counsel for the opposite party who had appeared before the Single Judge or on service of the opposite party.

6. LPA against interim orders of the Single Judge should invariably be disposed of early and at any rate, within a period of thirty days from the first hearing.

7. Before LPA against final orders in Writ Petitions are heard, brief written submissions must be filed by both parties within such time as may be fixed by the Court.

PART-VI

Second Appeals:

1. Even at the stage of admission, the questions of law with a brief synopsis and written submissions on each of the propositions should be filed so as to enable the Court to consider whether there is a substantial question of law.
2. Wherever the Court is inclined to entertain the appeal, apart from normal procedure for service as per rules, advance notice shall be given to the counsel who had appeared in the first Appellate Court.

3. The notice should require the respondents to file their written submissions within a period of eight weeks from service of notice.
4. Efforts should be made to complete the hearing of the Second Appeals within a period of six months.

PART-VII

Civil Revision:-The practice direction in regard to LPAs and First Appeals to the High Courts, should mutatis mutandis apply in respect of revision petitions.

PART-VIII

Criminal AppealsBased on offence, sentence and whether the accused is on bail or in Jail Criminal Appeals shall be classified as follows:

- (i) **Track I:** Capital punishment cases, rape, sexual offences, dowry death cases.
- (ii) **Track II:** Cases where the accused is not granted bail and is in jail.
- (iii) **Track III:** Cases which affect a large number of persons such as cases of mass cheating, economic offences, illicit liquor tragedy, food adulteration cases, offences of sensitive nature.
- (iv) **Track IV:** Offences under TADA, NDPS, Prevention of Corruption ACT, etc.
- (v) **Track V:** all other offences.

1. The endeavour should be to complete Track I Cases within a period of six months, Tracks II cases within nine months, Track III within a year, Track IV and Track V within fifteen months.

2. Whenever an appeal is filed by a person in jail, and also when appeals are filed by State, the complete paper-books including the evidence, should be filed by the State within such period as may be fixed by Court.

3. In appeals against acquittals, steps for appointment of amicus curie or State Legal Aid Counsel in respect of the accused who do not have a lawyer of their own should be under taken by the Registry/(State Legal Service Committee) immediately after completion of four weeks of service of notice. It shall be presumed that in such an event the accused is not in a position to appoint counsel, and within two weeks thereafter counsel shall be appointed and shall be furnished all the papers.

PART-IX

Note.—Wherever there is any inconsistency between these rules and the provision of either the Code of Civil Procedure, 1908 or the Code of Criminal Procedure, 1973 or the Patna High Court Rules, or any other statute, the provision of such Codes and statute, the provisions of such Codes and statutes shall prevail."

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